

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #95-23**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Taxability of engraving plates used by the taxpayer to produce molds and rubber flexographic plates.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

The taxpayer is a manufacturer of printed plastic film, which is used by taxpayer's customers to make plastic bags used in packaging. In the process of making this film, the taxpayer uses engraving plates. The engraving plates are used to make molds; the molds are used to make rubber flexographic plates which are actually used in the process of printing the plastic film product.

Taxpayer's customer has title to the engraving plates, but the taxpayer retains possession, for its use. A charge is made to taxpayer's customer for the plate. The charge consists of one lump sum, calculated as the cost of the engraving plate plus the amount of tax which would be due on the cost of the plate. The billing to the customer does not show any sales tax on this amount.

ISSUE

Are the engraving plates exempt from sales and use tax as industrial machinery?

RULING

The engraving plates do not qualify as industrial machinery.

ANALYSIS

Industrial machinery, for the purpose of the exemption found at T.C.A. § 67-6-206 (a), is defined in T.C.A. § 67-6-102 (12). The pertinent part of the definition defines as industrial machinery "[m]achinery . . . which is necessary to, and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises" (emphasis supplied).

In this case, only the flexographic rubber plate is "primarily for" the manufacturing of the printed plastic film. The engraving plate is not principally used for the purpose of processing the printed plastic film; its only use is in fabricating the mold, which is not a product being processed for sale. Therefore, the engraving plate is not primarily for the fabrication or processing of the film, but is for a prior process which takes place separate and apart from the processing of the printed plastic film. Since the machinery is not used in processing the product, it is not industrial machinery.

When a charge is made to the customer for the engraving plate, and the customer obtains title to the plate, it is a sale of tangible personal property. Since the plate is not exempt as industrial machinery, the total charge made to the customer for the plate is subject to sales tax, and tax is due and should be collected and remitted on the total charge other than sales tax separately itemized and collected from the customer.

The taxpayer has asked if it is entitled to a refund on tax previously paid on the engraving plates. Since the engraving plates are not tax exempt as industrial machinery, it is not necessary to address the question of refunding any tax already paid.

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Tax Counsel 3

APPROVED: Ruth E. Johnson, Commissioner

DATE: 6/9/95